IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7951 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANKARBHAI BABULAL KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 29-06-2000 Annexure : A passed by Respondent No.1 which he has passed in exercise of powers

conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on three Prohibition Cases under the Bombay Prohibition Act lodged against him which are referred to in grounds of detention. He has placed reliance on statements of two witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of said two witnesses on 15-06-2000 and on 29-06-2000, he passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in it.

4. Shri S.R.Patel, the learned advocate for the petitioner has argued that out of three prohibition cases which are referred to in grounds of detention, last case bearing CR.No.64/2000 which is lodged in Prohibition Police Station of Baroda City was lodged against the present detenu on 31-01-2000, and thereafter, after about five months, this order of detention has been passed. The order of detention is required to be passed to prevent the activities of the detenu. During the period from 31-01-2000 to 28-06-2000, no case has been registered against the detenu, and therefore, there is a delay of about five months in between last offence registered and date of passing the order of detention. Merely because, there is a delay, the order of detention cannot be set aside. The delay is required to be explained by the concerned authority. Here in this case, none of the respondents has filed affidavit-in-reply to explain this delay, and therefore, the order of detention is vitiated by unexplained delay.

5. Shri S.R.Patel has cited an authority in case of ELESH NANDUBHAI PATEL Vs.COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in 1997(1) G.L.H. 381, wherein it has been held that unexplained delay makes a ground of detention not proximate, vitiating the

order of detention itself. In view of this, the order which is challenged in this writ petition is also vitiated by unexplained delay and therefore, it requires to be quashed and set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 29-06-2000 passed by Respondent no.1 which is at Annexure:A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 19/10/2000. (H.H.MEHTA,J.)
ccshah